



**INDIANA COURT OF APPEALS
ORAL ARGUMENT AT A GLANCE
JASPER HIGH SCHOOL**

LAVERNE BALTIMORE v. STATE OF INDIANA

Appeal from:

Floyd Superior Court
The Honorable Susan L. Orth,
Judge

Oral Argument:

Thursday, November 29, 2007
1:15—2:15 p.m.
30 minutes each side

CRIMINAL LAW

EVIDENCE

Did the trial court abuse its discretion by permitting the deaf victim's sign language interpreter to testify regarding the victim's difficulty communicating?

SUFFICIENCY

Was the evidence presented at trial sufficient to sustain Mr. Baltimore's burglary resulting in bodily injury conviction?

DOUBLE JEOPARDY

Do Mr. Baltimore's convictions for sexual battery and burglary resulting in bodily injury violate the Indiana Double Jeopardy Clause?

APPROPRIATENESS OF SENTENCE

Is Mr. Baltimore's fifty-three year sentence inappropriate in light of the nature of the offenses and his character?

CASE SYNOPSIS

**Facts and Procedural
History**

In June 2006, Sandra Wright and David Whitten, a married couple, lived in a Floyd County apartment complex with their son. Sandra is deaf and David is hard of hearing. Baltimore lived in the same apartment complex as Sandra and David. On the evening of June 15, 2006, Baltimore knocked on Sandra and David's door and asked David for a cigarette. Although David asked Baltimore to leave, Baltimore came back multiple times and continued to knock on the door. Sandra eventually fell asleep in the family room with the couple's son, and David fell asleep in the bedroom.

At approximately 2:00 a.m., Sandra awoke and saw Baltimore inside the apartment, very close to her. Baltimore grabbed Sandra by the neck and arms, leaving marks on her skin. Baltimore picked up Sandra's son and kissed him. Sandra took her son from Baltimore and put him back to bed. Baltimore then grabbed Sandra's neck and dragged her into the hallway, placing his hands under Sandra's shorts and on her breasts. David awoke to his wife's screams and found Baltimore in the family room with one hand on Sandra's face and the other on her breast. David told Baltimore to leave and he obeyed. After Baltimore left, David tried to close the front door of the apartment but was unable to do so because it was damaged.

Laverne Baltimore v. State of Indiana

CASE SYNOPSIS



On June 19, 2006, the State charged Baltimore with class A felony burglary resulting in bodily injury and class D felony sexual battery. A jury trial was held on August 22, 2006, and the jury found Baltimore guilty as charged. The trial court held a sentencing hearing and sentenced Baltimore to an aggregate term of fifty-three years imprisonment. Baltimore now appeals.

Parties' Arguments

I. Sufficiency

Baltimore argues that there was insufficient evidence presented at trial to sustain his burglary resulting in bodily injury conviction. Specifically, Baltimore argues that the State did not present unequivocal evidence that he broke into the apartment through the front door. Baltimore attacks Sandra's testimony because she testified that he broke into the apartment through both the door and the window. Baltimore argues that we should apply the incredibly dubiousity rule and reverse his conviction because Sandra's testimony is disjointed and indecipherable.

The State argues that in addition to Sandra's testimony, there is ample circumstantial evidence that Baltimore broke into Sandra and David's apartment through the front door. The State notes that David testified that the door was not broken when he went to bed but that it was broken and he was unable to close it after Baltimore left the apartment. Furthermore, a police officer testified that the door appeared to have been recently broken and photographs were admitted into evidence at trial. Thus, the State argues that there was sufficient evidence to prove beyond a reasonable doubt that Baltimore broke into the apartment and that the incredible dubiousity rule does not apply because there was additional evidence corroborating Sandra's testimony.

II. Interpreter's Testimony

Because Sandra is deaf, the trial court appointed an American Sign Language interpreter, Tammy Cantrell, to translate Sandra's testimony. Baltimore argues that the trial court abused its discretion when it permitted Cantrell to testify about American Sign Language and her experiences with Sandra. In sum, Baltimore argues that the State used Cantrell's testimony to remedy flaws in Sandra's testimony, violating his right to an impartial tribunal.

The State first argues that Baltimore waived this issue by not objecting to the specific testimony at trial. Additionally, the State argues that Cantrell's testimony was necessary for the jury to understand the nature of American Sign Language and Sandra's testimony. The State emphasizes that Cantrell testified that she was an impartial witness and not an advocate for or against Baltimore. Therefore, the State does not believe that the trial court abused its discretion by allowing Cantrell to testify at trial.

III. Double Jeopardy

One of the statutory elements of each of Baltimore's convictions is that he touched a victim. Baltimore argues that his convictions violate the Double Jeopardy Clause of the Indiana Constitution because there is a reasonable likelihood that the jury used the same evidence to sustain both convictions. Phrased another way, Baltimore argues that the jury relied on the same evidence of him touching Sandra to sustain both convictions, which violates double jeopardy principles.

The State argues that Baltimore's convictions do not violate double jeopardy principles because independent evidence of touching sustained each conviction. Specifically, the State argues that the touching for purposes of the burglary conviction occurred when Baltimore first entered the apartment and grabbed Sandra on the couch, whereas the touching for purposes of the sexual battery conviction occurred when Baltimore grabbed Sandra's breasts and put his hands under her shorts. Therefore, the State contends that it presented independent evidence to support each of Baltimore's convictions.

IV. Appropriateness

Baltimore argues that his fifty-three year sentence is inappropriate in light of his character and the nature of his offenses. He argues that his crime did not warrant the maximum possible sentence and asks us to revise his sentence and impose thirty years imprisonment. The State argues that Baltimore's sentence is not inappropriate in light of his criminal history and the fact that he attacked an innocent deaf woman in her home.

TODAY'S PANEL OF JUDGES

Hon. John G. Baker (Monroe County), Presiding

- Judge of the Court of Appeals since June 1989
- Chief Judge since March 2007

John G. Baker is originally from Aurora in Dearborn County and lived in Monroe County for 35 years. Since June 1989, he has served as a Judge of the Indiana Court of Appeals representing the First District and has authored more than 3,000 majority opinions. Prior to becoming an appellate court judge, he served as county court and superior court judge for 13½ years in Bloomington, disposing of more than 15,000 cases.

Judge Baker graduated from Culver Military Academy and received his A.B. degree from Indiana University in 1968 in History and his J.D. from the Indiana University School of Law — Bloomington in 1971. He received his LLM in Judicial Process from the University of Virginia in 1995. Before assuming the trial bench, he was a partner in the firm of Baker, Barnhart and Andrews in Bloomington and was a Captain in the U.S. Army Reserves.

Since 1980, Judge Baker has taught as an adjunct professor at Indiana University's School of Public and Environmental Affairs and since 2004 at the School of

Law in Bloomington. In addition, Judge Baker has served on the faculties of the Indiana Judicial College, Indiana Continuing Legal Education Forum, and the National Institute of Trial Advocacy.

His professional associations include the American, Indiana State, Monroe County and Indianapolis Bar Associations. For the latter, he served as Vice-President in 1995. He has been a member of the Indiana Judges Association's Board of Managers continually since 1979 and served as its President from January of 1987 through June of 1989.

Judge Baker has been active in community and civic affairs as well. In addition to his church, YMCA, and other similar organizations, Judge Baker has been active in Boy Scouts of America since his youth and was awarded the rank of Eagle Scout.

Judge Baker was retained on the Court by election in 1992 and 2002. He and his wife have five children and — so far — four grandchildren.

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

Today's oral argument is the 199th case the Court of Appeals has heard "on the road" since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. Edward W. Najam, Jr. (Monroe County)

- Judge of the Court of Appeals since December 1992

Edward W. Najam, Jr., of Bloomington, Monroe County, was appointed to the Court of Appeals by Governor Evan Bayh in 1992 and was retained by the electorate in 1996 and 2006.

Judge Najam graduated from the Indiana University High School in Bloomington, where he grew up, and attended Indiana University at Bloomington. At I.U. he earned a B. A. in political science, with highest distinction, in 1969, was elected to Phi Beta Kappa, and was elected Student Body President. Judge Najam earned his J.D. from Harvard Law School in 1972.

After admission to the Bar, he was Administrative Assistant to the Mayor of Bloomington for two years and an attorney in private practice for eighteen years. He served as a member of the Civil Justice Reform Act Advisory Group and the Local Rules Advisory Committee of the United States District Court for the Southern District of Indiana. He was a member of the Bloomington Rotary Club, the Greater Bloomington Chamber of Commerce, and President of the Monroe County Family YMCA Board of Directors.

As Chair of the Appellate Practice Section of the Indiana State Bar Association, he initiated the

Appellate Rules Project, which culminated in a complete revision of the Indiana Rules of Appellate Procedure. In 2001, he organized and co-chaired "Caught in the Middle: A National Symposium on the Role of State Intermediate Appellate Courts," attended by judges from twenty-two states, the first such national conference. He has served as a member of the Indiana Supreme Court Committee on Rules of Practice and Procedure (1995 to 2005) and the Indiana Supreme Court Judicial Technology and Automation Committee (1999 to 2005), and he represents the judiciary on the Indiana Department of Homeland Security Counter-Terrorism and Security Council.

Judge Najam is a member of the American, Indiana, and Monroe County Bar Associations, a graduate of the Indiana Graduate Program for Judges, a member of the Indiana University School of Law – Bloomington Board of Visitors, a Fellow of the Indiana and Indianapolis Bar Foundations, a member of Phi Delta Phi legal fraternity, and an Eagle Scout.

The 15 judges of the Indiana Court of Appeals issue more than 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



TODAY'S PANEL OF JUDGES

Hon. Melissa S. May (Vanderburgh County)

- Judge of the Court of Appeals since April 1998



Melissa S. May was appointed to the Court of Appeals in April of 1998 by Governor Frank O'Bannon and was retained on the Court by election in 2000. Judge May was born in Elkhart, Indiana. She graduated from Indiana University-South Bend with a B.S. in 1980 and from Indiana University School of Law-Indianapolis with a J.D. in 1984.

Between law school and her appointment to the Court, Judge May practiced law in Evansville, Indiana, focusing on insurance defense and personal injury litigation.

Judge May has been active in local, state, and national bar associations and bar foundations. She served the Indiana Bar Association on the Board of Managers from 1992-1994, as Chair of the Litigation Section from 1998-1999, as Counsel to the President from 2000-2001, and as co-chair of the Futures Taskforce. In addition, she was a member of the Board of Directors of the

Indiana Continuing Legal Education Forum from 1994-1999 and has been the co-chair of ICLEF's Indiana Trial Advocacy College from 2001-2005. She is a fellow of the Indiana Bar Foundation, as well as for the American Bar Association, and she is a Master Fellow of the Indianapolis Bar Association.

From 1999 till December 2004, Judge May was a member of Indiana's Continuing Legal Education Commission, where she chaired the Specialization Committee. She is currently on an Advisory Panel to the Specialization Committee. In 2005, she was named to the Indiana Pro Bono Commission. In 2003, Judge May was named to the American Bar Association's Standing Committee on Attorney Specialization. She is now special counsel to that committee. In the spring of 2004, Judge May became adjunct faculty at Indiana University School of Law-Indianapolis, where she teaches a trial advocacy course. Also in the spring of 2004, she was awarded an Honorary Doctor of Civil Law from the University of Southern Indiana.

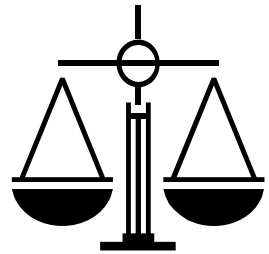
ATTORNEYS FOR THE PARTIES

For Appellant, Laverne Baltimore: **Matthew Jon McGovern** **Evansville**

Matthew Jon McGovern handles criminal and civil appeals and consultations as a solo practitioner of law in Evansville. Previously he was First Deputy Prosecutor in Floyd County, where he conducted criminal trials and worked with local and federal law enforcement in the detection and prosecution of crime. Prior to his job as a prosecutor, Mr. McGovern was a judicial law clerk to the Honorable Margret G. Robb of the Indiana Court of Appeals. In this job he researched Indiana law and legal theory, drafted legal memoranda on various appeals involving criminal, personal injury, medical malpractice, corporate contracts and other issues, and reviewed and discussed cases with Judge Robb before panel votes.

Mr. McGovern also worked as a clerk at a law firm in Indianapolis and as a Congressional intern and page in the Washington, DC office and as a campaign aide in the Evansville office of former Congressman Frank McCloskey of Indiana's 8th Congressional District.

Mr. McGovern received his Bachelor of Arts degree in Philosophy and Biology from the University of Evansville in 1994 and his law degree from Notre Dame Law School in 1998. As a member of the National Moot Court Team, he was one of four students to deliver the 1998 Notre Dame Showcase Argument. He has presented appeals before the Indiana Supreme Court and the Indiana Court of Appeals.



For Appellee, State of Indiana: **Monika Talbot** **Deputy Attorney General** **Indianapolis**

Monika Prekopa Talbot worked at two different law firms before joining the Attorney General's Office. While at these firms, she dealt with cases involving product liability, employment law, personal injury, family law, and criminal appeals. She currently deals with criminal appellate cases exclusively. In addition to writing briefs and delivering oral arguments, her duties include supervising other attorneys and interns.

Ms. Talbot earned a Bachelor of Arts from Eotvos Lorand University in Budapest, Hungary, with majors in English and French, and a

Master of Arts in English from Rutgers University. Her J.D. came from Indiana University-Indianapolis. Prior to her admission to the bar, Ms. Talbot taught English as a Second Language in Beverly Hills, California to students from Asia and Europe.

Ms. Talbot enjoys learning languages (she is currently working on Spanish), traveling ("the last exciting place I visited was Machu Picchu, Peru"), hiking, and cooking – she took a Mediterranean cooking course recently in Tuscany.